

UNITED STATES DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,)
)
Plaintiff,)
)
vs.)
)
1625 B BEAR MOUNTAIN WAY,)
KETTLE FALLS, WASHINGTON,)
TOGETHER WITH ALL)
APPURTENANCES, FIXTURES,)
ATTACHMENTS, AND IMPROVEMENTS)
THERE TO AND THEREUPON,)
)
Defendant.)
)

CV-06-0139-EFS

FINAL ORDER OF FORFEITURE

Before the Court, without oral argument, is the Government's Motion for Entry of the Final Order of Forfeiture (Ct. Rec. 42). For the reasons enumerated below, the Court finds good cause to grant the Government's motion.

Plaintiff, United States of America, alleged in a Verified Complaint for Forfeiture In Rem, that the defendant property is subject to forfeiture to the United States pursuant to 21 U.S.C. § 881.

The Court has jurisdiction over this matter by virtue of 28 U.S.C. §§ 1345 and 1355. Venue is proper pursuant to 28 U.S.C. § 1395.

1 The defendant property consists of real property located at
2 1625 B Bear Mountain Way, Kettle Falls, Washington, and is legally
3 described as follows:

4 The E1/2 of the NW1/4 of the SW1/4 and the
5 NE1/4 of the SW1/4 of the SW1/4 of Section 32,
6 Township 37 North, Range 38 East, W.M., in
7 Stevens County, Washington.

8 Together with all appurtenances, fixtures,
9 attachments, and improvements thereto and
10 thereupon.

11 SUBJECT to any easements, rights of way,
12 reservations and/or exceptions, and actions of
13 record.

14 Real property records and a title report show that the
15 property is owned by Norris G. Gomez and Karen E. Gomez, husband
16 and wife, buyers, subject to a Deed of Trust to the Raines Family
17 Partnership, seller. Norris G. Gomez is deceased. On May 5, 2006,
18 United States Drug Enforcement Task Force Officer Shane McClary
19 posted copies of the Verified Complaint for Forfeiture In Rem,
20 Notice of Complaint for Forfeiture, and Lis Pendens in the above-
21 entitled matter on the Defendant real property located at 1625 B
22 Bear Mountain Way, Kettle Falls, Washington, as evidenced by the
23 Affidavit of Shane McClary filed with the Court on May 9, 2006.

24 On May 9, 2006, Mark F. Gomez was served, via certified mail,
25 with copies of the Verified Complaint for Forfeiture In Rem, Notice
26 of Complaint for Forfeiture, and Lis Pendens in the above-entitled
27 matter, as evidenced by the Certificate of Service of Notice by
28 Mail filed with the Court on May 9, 2006. Claimant, Mark F. Gomez,
filed an unverified claim to the Defendant real property, and an
answer to the complaint on August 6, 2006. On August 22, 2006, a
Praecipe was filed by Mark F. Gomez to verify his claim.

1 On May 9, 2006, Carolyn Niemi was served, via certified mail,
2 with copies of the Verified Complaint for Forfeiture In Rem, Notice
3 of Complaint for Forfeiture, and Lis Pendens in the above-entitled
4 matter, as evidenced by the Certificate of Service of Notice by
5 Mail filed with the Court on May 9, 2006. Carolyn Niemi did not
6 file a timely claim or answer, and a Clerk's Order of Default was
7 entered on August 18, 2006.

8 On May 9, 2006, Karen E. Gomez was served, via certified mail,
9 with copies of the Verified Complaint for Forfeiture In Rem, Notice
10 of Complaint for Forfeiture, and Lis Pendens in the above-entitled
11 matter, as evidenced by the Certificate of Service of Notice by
12 Mail filed with the Court on May 9, 2006. On August 8, Karen E.
13 Gomez was sent, via facsimile at her request to a facsimile number
14 provided by her, a copy of the original service letter dated May 9,
15 2006, including the Verified Complaint for Forfeiture In Rem,
16 Notice of Complaint for Forfeiture, and Lis Pendens; and also the
17 Notice of Default and Declaration of Jared C. Kimball, which had
18 been previously sent via certified mail on July 28, 2006. On
19 August 9, 2006, Karen E. Gomez was served, via certified mail, with
20 copies of the Verified Complaint for Forfeiture In Rem, Notice of
21 Complaint for Forfeiture, and Lis Pendens; and also with the Notice
22 of Default, Amended Notice of Default, Motion for Default and
23 Declaration of Jared C. Kimball; along with a letter dated August
24 9, 2006, as evidenced by the Certificate of Service of Notice by
25 Mail filed in this matter on August 9, 2006. Karen Gomez did not
26 file a timely claim or answer, and a Clerk's Order of Default was
27 entered on August 29, 2006.

1 On May 9, 2006, the Raines Family Partnership was served, via
2 certified mail, with copies of the Verified Complaint for
3 Forfeiture In Rem, Notice of Complaint for Forfeiture, and Lis
4 Pendens in the above-entitled matter, as evidenced by the
5 Certificate of Service of Notice by Mail filed with the Court on
6 May 9, 2006. Claimant, Raines Family Partnership filed its claim
7 to the Defendant real property, and an answer to the complaint on
8 May 22, 2006. On August 2, 2006, the United States and Claimant,
9 Raines Family Partnership, filed an Expedited Settlement Agreement.

10 The Notice of Complaint was published on May 17, 24, and 31,
11 2006, in the Statesman-Examiner, a newspaper of general circulation
12 in Stevens County, Washington, as evidenced by the USM-285 form
13 filed with the Court on June 8, 2006. Rule C of the Supplemental
14 Rules for Certain Admiralty and Maritime Claims, Fed. R. Civ. P.,
15 and 18 U.S.C. § 983(a)(4)(A), require that claimants file a claim
16 within thirty (30) days after final date of publication of the
17 Notice of Complaint for Forfeiture, or within thirty (30) days
18 after service of the complaint, whichever occurs first. At the
19 latest this 30-day period expired on June 30, 2006.

20 On September 14, 2006, the Defendant real property was
21 included in the forfeiture count of an information superseding
22 indictment filed in the Eastern District of Washington in United
23 States v. Mark Fabian Gomez, Court No. CR-06-0051-1-FVS.

24 On September 14, 2006, Mark Fabian Gomez entered into a plea
25 agreement in which he agreed to plead guilty to Count 1 of said
26 Information Superseding Indictment, charging Conspiracy to
27 Manufacture 1,000 or More Marijuana Plants in violation of 21
28 U.S.C. § 846. In said plea agreement, Mr. Gomez agreed to the

1 forfeiture of the real property located at 1625 B Bear Mountain
2 Road, Kettle Falls, Washington, and to execute any pleadings or
3 forms necessary to effectuate such forfeiture.

4 On December 11, 2006, the United States and Claimant, Mark
5 Fabian Gomez filed a Stipulation for Order of Forfeiture with
6 regards to his claim to the Defendant real property. In said
7 stipulation, Claimant Mark Fabian Gomez agreed to the entry of a
8 final order of forfeiture without further notice or presentment of
9 said order. In addition, the Declaration of Mark Gomez was filed
10 with the Court on December 11, 2006. In said declaration, Mark
11 Gomez declares that he, not Norris G. Gomez and Karen E. Gomez,
12 purchased the Defendant real property; that the property was
13 deliberately placed "in my father's name so that it was harder for
14 law enforcement to track down"; that his father and stepmother
15 have no financial interest in the Defendant real property; and that
16 his father, Norris G. Gomez, is deceased and since his father held
17 no interest in the Defendant real property, his father's estate has
18 no interest in the Defendant real property.

19 It appearing to the Court that:

20 (A) record owner Norris G. Gomez held no interest in the
21 Defendant real property, and is now deceased;

22 (B) record owner Karen E. Gomez held no interest in the
23 Defendant real property, and that any interest that Karen E.
24 Gomez may have had in the Defendant real property has been
25 resolved through the entry of a Clerk's Order of Default;

26 (C) the interest of Mark Fabian Gomez has been resolved by the
27 entry of the Stipulation for Order of Forfeiture filed herein
28 on December 11, 2006;

1 (D) any interest that Carolyn Niemi may have had in the
2 Defendant real property has been resolved through the entry of
3 a Clerk's Order of Default; and

4 (E) the interest of Claimant, Raines Family Partnership has
5 been resolved through the entry of an Expedited Settlement
6 Agreement.

7 Accordingly, **IT IS HEREBY ORDERED:**

8 1. The Government's Motion for Entry of the Final Order of
9 Forfeiture (**Ct. Rec. 42**) is **GRANTED**.

10 2. Defendant real property located at 1625 B Bear Mountain
11 Way, Kettle Falls, Washington, is hereby forfeited to the United
12 States of America, and no right, title, or interest shall exist in
13 any other person.

14 2. The United States Marshal Service shall physically seize
15 and take custody of the subject property, immediately evicting any
16 occupants or tenants therein.

17 3. Pursuant to the Expedited Settlement Agreement filed by the
18 United States and Claimant, Raines Family Partnership, that upon
19 sale of the Defendant real property, the United States Marshals
20 Service shall pay Claimant, Raines Family Partnership, the
21 following amounts:

22 a. All unpaid principal due to Claimant, Raines Family
23 Partnership, in the amount of \$37,445.29 as of May 16, 2006,
24 pursuant to the Sellers Assignment of Contract and Deed of
25 dated May 22, 2003, recorded in the official records of the
26 Stevens County Auditor's Office, under Recording No. 2003
27 0006918; and,
28

1 b. all unpaid interest, which totaled \$581.68 through July
2 26, 2006, and additional interest calculated at the base
3 contractual rate (not the default rate) under the above
4 sellers assignment assessed at \$8.207 per diem, from July 27,
5 2006, until the date of payment.

6 4. The forfeited real property shall be disposed of in
7 accordance with law by the United States Marshals Service.

8 5. The Clerk is directed to enter **JUDGMENT** in the Government's
9 favor.

10 6. This file shall be **CLOSED**, and all pending motions **DENIED**
11 **AS MOOT**.

12 **IT IS SO ORDERED.** The District Court Executive is directed to
13 enter this Order and forward a copy to all parties.

14 DATED this 14th day of December 2006.

15
16 S/ Edward F. Shea

17 Edward F. Shea
18 United States District Judge

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